[DIVISIONAL COURT.]

April 2, 3 & 7 May 1895

THE *Blue Bell*.

[IN THE COURT OF APPEAL.]

March 28 & 29 1895

THE *Satanita*.

A corrected text version with some

notes by

E. C. G.

What follows is an easy to read, corrected text version of the judgment in two cases involving maritime activity from different ends of the spectrum.

The first involves a Thames barge and a coaster, the *Shield* and the *Blue Bell*; it was heard in the Divisional Court on April 2, 3 & 7 May 1895.

The second concerns two yachts racing on the Clyde, the *Valkyrie* and the *Satanita*; the Case was in the Court of Appeal on March 28 & 29 1895.

I have added a number of notes - mainly about the legal professionals involved.

Original page numbers are in square brackets [].

Original footnote numbers are shown thus (-).

My footnotes are initialled.

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PROBATE DIVISION.
[1895]

[DIVISIONAL COURT.]

April 2, 3; 7 May

THE *Blue Bell*.

Admiralty — Collision — Fog — "Fairway of River" — Duty to ring Bell when at Anchor — Bye-laws for Navigation of Thames, 1880, art. 13.

By art. 13 of the Bye-laws for the Navigation of the Thames, 1880, a vessel in fog

> "when in the fairway of the river, and not under way, shall, at intervals of not more than two minutes, ring the bell."

The plaintiff's sailing barge, having anchored, on account of fog, above and inside the West Blyth buoy in Sea Reach, did not ring her bell at the above intervals. She was run into and damaged by the defendants' steamer, which, in the Court below, was found alone to blame for negligent navigation in fog:—

Held by the Divisional Court (Sir F. H. Jeune President, and Bruce J.), that the barge was also to blame, as she was within art. 13, and bound to ring her bell; for the word "fairway" means "a clear passage-way by water," and the barge was anchored in a part of the river where it is safe for vessels of moderate draught to navigate.

APPEAL by defendants, the owners of the *Blue Bell*, against a decision of the judge of the City of London Court pronouncing their vessel alone to blame for a collision with the plaintiff's barge *Shield*.

The case is reported only on the question of the meaning of the word "fairway" in the

regulations for the navigation of the River Thames.[1]

On October 11, 1894, the sailing barge *Shield* — of forty-nine tons register, drawing 5 ft. 10 in. forward and six feet aft, from the Medway to London, with a cargo of clay and two hands — anchored, on account of fog, above and inside the West Blyth buoy in Sea Reach in the River Thames. She veered out ten or [243] eleven fathoms of chain cable, exhibited an anchor light, and occasionally, but at longer than the prescribed intervals, rang her bell. About 2.20 a.m. on October 12 she was run into and damaged by the *Blue Bell*, a steamship belonging to the defendants, of 344 tons register, from London to Antwerp with a general cargo, and drawing ten feet forward and 11 ft. 6 in. aft.

The learned judge in the Court below held that the plaintiff's barge was

> "out of the fairway of the river,"

and that all she was bound to do was to have her riding light up; that the defendants' steamship came out of the fairway, and was,

> "to use the language of the common law, a kind of trespasser,"

negligently navigating in fog.

Sir Walter Phillmore,[2] and J. D. Crawford[3] for the appellants, the owners of the *Blue Bell*, contended that the barge was alone to blame, as she was in the "fairway " —

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1 (1) *Bye-laws for the Regulation of the Navigation of the River Thames* approved by Order in Council, March 18,1880:
"12. Every steam vessel (and) every sailing vessel navigating the river shall be provided with ... an efficient bell."
"13. In fog, whether by day or night, the signals described in this rule shall "be used, that is to say ....
" (c.) All steam vessels and all sailing vessels when in the fairway of the river, and not under way, shall at intervals of not more than two minutes ring the bell." - Book f/n.

2 Sir Walter George Frank Phillimore Bart., Q.C, D.C.L., 1st Baron Phillimore. Member of the Western circuit, chancellor of the diocese of Lincoln, official of the archdeaconry of Colchester, secretary to Rt Hon. Sir Robert Phillimore, judge of High Court of Admiralty1867-80, student of Christ Church and sometime fellow of All Souls', Oxon, editor of Blunt's Book of Church Law, a student of the Middle Temple 21 Nov., 1865, called to the bar17 Nov., 1868, Q.C. Dec, 1883 (only son of Rt Hon. Sir Robert Joseph Phillimore, Bart., late justice of the High Court of Justice) ; Births Dec 1845 [b. 21 Nov] Phillimore Walter George Frank St Geo Han Sq 1 p; Marriages Sep 1870 [m. 26 Jul] Lushington Agnes to Phillimore Walter George F St Geo Han Sq 1a p671. eldest dau. of late Charles Manners Lushington, Esq., M.P. Deaths Mar 1929 [d. 13 Mar] Phillimore Walter G F Age 53 Kensington 1a p321. Estate £95,222 2s 6d. Address: 86, Eaton Place, S.W.; 4, Paper Bldgs., Temple, E.C. - ECG

3 Crawford, John Dawson, B,A, Trin. Coll, Camb., a student of the Inner Temple 14 May, 1881 (then aged 19), called to the bar 26 Jan., 1884. Later Judge. (2nd son of Joseph Dawson Crawford, of 40, Rodney Street, Liverpool, surgeon); Deaths Sep 1946 Crawford John D Age 84 Brentford 5e p154. Estate £95,383. - ECG

that is, though not in the deep water channel, she was in a navigable part of the river, where vessels of light draught go in order to escape the tide, and, therefore, during the fog, she was bound to warn other vessels of her presence by sounding her bell in accordance with the regulations.

Pyke, Q.C.[4] and F. Laing,[5] for the respondent, the owner of the barge *Shield*, contended that the appellants' steamer *Blue Bell* was negligently navigating in fog at her own risk out of the fairway, and, on the question of the right of the barge to anchor where she did, cited *The Aguadillana*,[6] and as to "fairway" being synonymous with mid-channel," referred to the wording of art. 21 of the Regulations of 1884 for Preventing Collisions at Sea.

Cur. adv. vidt.

May 7. The judgment of the Divisional Court (Sir F. H. Jeune, President, and Bruce J.) was delivered by

Bruce J.

The collision happened in the River Thames, near the West Blyth buoy, above and inside of the buoy — that is, between the buoy and the south shore of the river. The barge was at anchor, and the learned judge has held that, as the barge [244] was inside the buoy, she was out of the fairway, and was under no obligation to ring a bell. The learned judge has also found as the steamship *Blue Bell* passed to the south of the buoy,

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4 Pyke, Lionel Edward, LL.B., B.A. (1st class honours) London Univ. 1873 and a member of Convocation; member of the Western circuit, a student of the Inner Temple 3 Nov., 1874; called to the bar 13 June, 1877 (2nd son of Joseph Pyke, Esq., of London); Births Jun 1854 Pyke Lionel Edward Medway 2a p297. Marriages Sep 1887 Pyke Lionel Edward Paddington 1a p164. Deaths Mar 1899 [laryngitis and pneumonia] Pyke Lionel Edward Age 44 Eastbourne 2b p62. PYKE Lionel Edward of 2 Cornwall-gardens Middlesex died 26 March 1899 at Hern-house Eastbourne Sussex Probate London 20 May to Mary Rachel Pykc widow and Edgar Rowe Everington gentleman Effects £4,189 13s. 5d.
Rhyl Record & Advertiser 1 Apr 1899.
DEATH OF MR. LIONEL E. PYKE, Q.C. The legal profession sustained yet another loss by the death of Mr. Lionel Edward Pyke, Q.C., which has taken place at Eastbourne from laryngitis and pneumonia. For several years this well-known barrister, has been a leader at the Admiralty Bar, and on Monday there were suitable tributes paid to his memory. Mr. Pyke was born at Chatham in 1854, and was within a month of attaining his forty-fifth birthday. He received his education at Rochester Cathedral Grammar School and at University College. In Admiralty cases his mastery of naval details was astonishing. - ECG

5 Laing, Frederick Ninian Robert, a student of the Middle Temple 22 May, 1880, called to the bar 18 April, 1883 (youngest son of late Robert Laing, of Jedburgh, N.B., solicitor, dec.); Marriages Dec 1897 Laing Frederick Ninean R Kensington1a p406. Deaths Mar 1931 Laing Frederick N R Age 74 Billericay 4a 875a. LAING Frederick Ninian Robert of 8 Fig Tree Court Temple Middlesex and of The Little House Billericay Essex died 10 March 1931 at The Little House. Probate London 22 April to Rodney Ninian Warrington Laing solicitor. Effects £25,845 2s. 2d. Resworn £24,815 8s. 6d. Address: 7, New Square, Lincoln's Inn, W.C. - ECG

6 (1) 6 Asp. M. L. C. 390.

> "she was, to use the language of the common law, a kind of trespasser."

He has decided that the steamship is alone to blame for the collision.

The appellants, the owners of the *Blue Bell*, contend that the barge was to blame for neglecting to comply with the provisions of art. 13 of the regulations governing the navigation of vessels in the River Thames. [The learned judge read arts. 12 and 13, and continued: —]

There is no express finding by the judge in the Court below that the *Shield* neglected to comply with the article last mentioned; all that he decided on this part of the case was that the *Shield* was not bound to ring a bell. We think, however, it may be inferred from passages in his judgment that he was not satisfied upon the evidence that those on board the *Shield* did at intervals of not more than two minutes ring a bell. It is of course a difficult matter for us, who have not heard the witnesses, to deal with a question of fact upon which there has been no express finding by the Court below; but we gather from the evidence of the master of the barge himself that her bell had not been rung for an interval of ten minutes before the collision. It is true that statements of witnesses respecting intervals of time are often far from accurate, and the mate of the barge, although he agrees with the statement of the master as to the time by the clock (2.10 a.m.) when the bell was last rung, says, he thinks that it was about two or three minutes before he heard the shouting from the *Blue Bell.* But neither the master nor the mate seems to have undertaken the duty of attending to the bell: the mate said that sometimes he attended to it and sometimes the master. In his deposition before the receiver of wreck the master stated that he or his mate had frequently visited the deck looking to the riding light and ringing the ship's bell. We think that the fair deduction from the whole of the evidence is that the master and the mate were below while the barge was at anchor, that one or the other came on deck at uncertain intervals, that the bell was rung only occasionally, and that it [245] was certainly not rung for an interval of more than two minutes, probably more than ten minutes before the collision.

Then the question arises whether art. 13 of the Thames regulations applies; in other words, whether the barge was in the fairway of the river. In his deposition before the receiver of wreck the master of the barge described his position to be about 500 yards above the Middle Blyth buoy, and just inside. At the hearing he described the place as 400 or 500 yards above the West Blyth buoy, and inside about 200 yards. He marked the place on a chart produced to him; but whether he knew the exact position in which he was anchored is, we think, somewhat doubtful. The depth of water above and inside the West Blyth buoy is not inconsiderable, for some distance above and inside the buoy the depth of water at low water springs is not less than eighteen feet,

and for more than a cable's length above and inside the buoy the depth is nowhere less than ten feet. When the barge *Shield* anchored, an hour and a half or two hours before high water, she anchored, according to the evidence of her master, in three fathoms. The barge *Sphere*, which drew five feet of water, was anchored forty or fifty yards inside of the *Shield*, and there was another barge (a light barge) anchored about fifty yards inside of the Sphere. The *Blue Bell* drew eleven feet six inches, and at the place of the collision there was certainly water enough for her at half ebb. All the facts stated in evidence seem to us to point to the conclusion that the *Shield* was anchored above and inside of the West Blyth buoy, but not so far inside as to be out of the navigable channel. That is to say, she was, we think, anchored in a part of the river where it is safe for vessels of moderate draught to navigate. The West Blyth and the Middle Blyth buoys mark the southern boundary of the channel commonly used by large vessels of deep draught; but they are put there simply as marks to indicate the extent of the deep water channel, and there is no regulation to forbid vessels navigating inshore of the buoys. There is a clear water-way inshore of the buoys into which sailing vessels of moderate draught when beating up or down the river occasionally stand, and even sailing vessels with a fair wind, and steam vessels such as the *Blue Bell*, when the tide is against them, pass inside of the [246] buoys to cheat the tide. Now we are asked to find that the the barge *Shield* when anchored, as we find she was, in a part of the waterway inside the buoys, where there is a clear passage, and where the smaller class of vessels not unfrequently navigate, was under no obligation to ring a bell in a fog. We need hardly say that neither reason nor convenience seems to favour such a conclusion. But of course we are bound by the Thames regulations, and we have only to determine the proper construction to be put upon the words there used. The question turns upon the meaning of the word "fairway." Was the *Shield* in the fairway of the river? The word fairway means, we think, a clear passage-way by water. Wherever there is an open navigable passage used by vessels proceeding up and down a river or channel, that may be said to be a fairway. We think that the meaning of art. 13 is that vessels when in any part of the river used for the passage of vessels shall in a fog, when not under way, ring a a bell. We think that the *Shield* was in the fairway, and that she was bound in compliance with art. 13 to ring a bell at intervals of not more than two minutes. She neglected this duty. If she had rung the bell as required by the article, we think that it is probable that the bell would have been heard by those on board the *Blue Bell* in time to have enabled them, to take measures to have avoided the collision. We must, therefore, decide that the *Shield* is to blame.

The next question to be considered is, was the *Blue Bell* to blame? We do not think that she can be said to have been "a kind of trespasser," as found by the learned judge below. The buoys, as we have already said, are laid down as guides to navigation, and there is no regulation which renders it unlawful for vessels to pass inshore of them. Article 11 of the regulations governing the navigation of vessels in the Thames provides that

> "all vessels entering or being overtaken by a fog shall be navigated with the greatest caution and at a very moderate speed."

According to the witnesses from the *Blue Bell*, the steamship was proceeding down the river dead-slow, when they came into a thick bank of fog, and the engines of the *Blue Bell* were stopped immediately, and the master of the *Blue Bell* gave orders to the second mate to stand by the anchor. According to the second [247] mate of the *Blue Bell*, her engines had been stopped for ten minutes before the collision. The engineer of the *Blue Bell* was not called, and no reason seems to have been given for his absence. There is no express finding by the learned judge that the steamship was proceeding at more than a very moderate speed; but he expressed the opinion that as the *Blue Bell* cut into the barge three feet that that could not have been done with the impact of a vessel going only with the tide. We do not feel so confident on that point. The blow was a stem on blow, the tide was of the force of about two knots, and we are not prepared to say that a steamship such as the *Blue Bell*, 175 feet in length and laden with a cargo of 300 or 400 tons, might not if she came stem on with a speed of no more than two knots against a barge at anchor cut three feet into the timbers of the barge. But, in the view we take of the case, it is not necessary for us to determine this point.

The *Blue Bell* ran into the fog ten minutes or more before the collision. Indeed, from one answer given by the master of the *Blue Bell*, it would seem to have been a quarter of an hour before the collision that the steamship came into the fog. After consulting the Elder Brethren, we have come to the conclusion that there was no good reason why the anchor of the *Blue Bell* should not have been let go some considerable time before the collision. It would only have been an act of common prudence that the *Blue Bell* should at once have dropped her anchor when she came into the bank of fog. The case of the *Otter*[7] establishes that in a dense fog it is the duty of a steam vessel to anchor as soon as circumstances will permit. We think that the *Blue Bell* is to blame for continuing to proceed, even though at a moderate speed, after she entered the fog for a period of ten minutes or more. The neglect of the duty to anchor in a thick fog is a frequent cause of damage to property and loss of life, and we conceive it to be highly important in the interests of navigation that those who disregard the duty should bear the loss occasioned by their imprudence.

For the reasons we have given, we pronounce both ships to blame. There will be no costs to either party. No costs of the cause by reason of the ordinary Admiralty rule. No costs of the appeal in accordance with the rule laid down in the Hector.[8]

Appeal allowed.

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7 (1) L. R. 4 A. & E. 203.
8 (1) 8 P. D. 218.

Solicitors for appellants (defendants): Keene, Marsland, Bryden & Besant.[9]

Solicitors for respondent (plaintiff): Ince, Colt & Ince.[10]

T. L. M.

C.A.
[IN THE COURT OF APPEAL.]

THE *Satanita*.

March 28, 29.

Admiralty — Collision — Damages — Contract overriding Limitation of Liability — Merchant Shipping Act Amendment Act, 1862 (25 & 26 Vict. c. 63), s. 54.

The defendant entered his yacht for a race on the condition that

> "while sailing under the entry"

he would obey and be bound by certain rules.

By one of the rules the owner of any yacht, disobeying or infringing any of them, was liable for

> "all damages arising therefrom."

Whilst sailing under these rules, and in breach of one of them, the defendant's yacht, through improper navigation without the actual fault or privity of the defendant, ran into and sank another yacht.

The plaintiffs, the owner, master, and crew of the yacht which had been sunk, sued

9 Arthur Robert Besant, sometime Senior Partner. offices Seething Lane and Worthing. Births Dec 1863 BESANT Arthur Robert Camberwell 1d p522 Deaths Mar 1934 [d. 12 Feb] Besant Arthur R Age 69 E. Preston 2b p567. Estate £29,606 15s 2d. - ECG

10 St Benet Chambers, Fenchurch Street, E.C. - ECG

the defendant for the damage sustained by the collision. The defendant counter-claimed for a stay of proceedings on payment into court of a sum equal to £8 per ton of the registered tonnage of his yacht with interest, as being the amount for which he was answerable under s. 54 of the Merchant Shipping Act Amendment Act, 1862: —

Held, by the Court of Appeal (Lord Esher M.R., Lopes and Rigby L.JJ.;, that, at the material time, a contract existed between the owners of the competing yachts by which the defendant became liable for all damages arising from the infringement of the rule, and therefore (reversing the decision of Bruce J.) the defendant could not, as against the plaintiff, the owner of the yacht sunk, set up the statutory limitation of liability.

Appeal by plaintiffs, the owner, master, and crew of the yacht *Valkyrie*, against a decree of Bruce J. pronouncing, in an action of damage by collision, that the defendant, the owner of the yacht *Satanita*, was entitled to limit his liability.

The material facts were: —

On July 5, 1894, about 10.30 a.m., the *Valkyrie*[11] and the *Satanita* — registered cutters of 106 and 117.02 tons respectively [249]

— were manoeuvring to get into position for starting for the fifty-mile race for the Muir Memorial Challenge Cup, at the 1895 Mudhook Yacht Club Regatta, in the Clyde, when the *Satanita*, on the port tack, ran into and sank the *Valkyrie*, which was close-hauled on the starboard tack.[12]

The entry, dated June 29, of the *Satanita* for the regatta was signed by the defendant, and contained the following clause:

> "I undertake that, while sailing under this entry, I will obey and be bound by the sailing rules of the Yacht Racing Association and the by-laws of the club."

The rules of the Yacht Racing Association, adopted by the club, provided among other things as follows: —

> Rule 17: . . . Five minutes before the start the preparative flag shall be lowered, a blue peter hoisted, and a gun fired; after which the yachts in the race shall be amenable to the rules. At the expiration of five minutes exactly the blue peter shall be hauled down, and a second gun fired as a signal to start. ..."

11 *Valkyrie* was built at the Henderson shipyard, Meadowside, on the River Clyde and launched on 29 Apr 1893, and took part in the 1893 America's Cup [see below]. She was designed by George Lennox Watson (1851 – 1904). She was written off after this incident.

12 Lord Dunraven was rescued by the steam yacht *Hebe*. A seaman was injured, breaking a leg.

At the time of the collision the first gun had been fired and the yachts were awaiting the second gun.

> Rule 18: "When two yachts are approaching one another, so as to involve risk of collision, one of them shall keep out of the way of the other as follows, viz.: —
>
> > " A yacht which is running free shall keep out of the way of a yacht which is close-hauled.
> >
> > "A yacht which is close-hauled on the port tack shall keep out of the way of a yacht which is close-hauled on the starboard tack. . . ."

This is the same as art. 14 of the Regulations for Preventing Collisions at Sea, substituting "yacht" for "sailing ship."

> Rule 24:"... If a yacht, in consequence of her neglect of any of these rules, shall foul another yacht . . . she shall forfeit all claim to the prize, and shall pay all damages."
>
> Rule 32: " Any yacht disobeying or infringing any of these rules, which shall apply to all yachts, whether sailing in the same or different races, shall be disqualified from receiving any prize she would otherwise have won, and her owner shall be liable for all damages arising therefrom. . . ."

[250] . The plaintiffs, in an action in personam in the Admiralty 1895 Division of the High Court, charged the *Satanita* with a breach the of rule 18, and alleged that by the terms of the entry and in consideration that the owner of the *Valkyrie* would race with the defendant under these rules, the defendant agreed that if the *Satanita* fouled the *Valkyrie* in consequence of her neglect of any of the rules, the *Satanita* would pay all damages, and that for the infringement of the rule the defendant had agreed to, and had, become liable to the owner of the *Valkyrie* for all the damages arising therefrom.

The defendant denied that he had entered into any such agreement as alleged and, by paragraph 4 of the defence (which by consent was treated as a counter-claim), alleged that:

> "if the said collision and damage was caused by the improper navigation of the *Satanita* which, for the purpose of this action only, the defendant admits to have been the case, the said collision and damages occurred without the actual fault or privity of the defendant, and he brings into Court the sum of £952 7s. 4d., being the amount of damages in which the defendant is

answerable under the statute in that behalf[13] calculated at the rate of £8 per ton on the registered tonnage of the *Satanita*, including interest thereon at the rate of £4per cent, per annum from July 5, 1894, until payment into Court. . . ."

At the trial on December 18, before Bruce J., assisted by two of the Elder Brethren of the Trinity House, the evidence of the defendant, and of the master of the *Satanita*, shewed that, in [251]accordance with the rules of the regatta,[14] the *Satanita* was being steered by an amateur, and that the defendant, the owner of the yacht, though he was on board, took no part in the the navigation. The plaintiffs thereupon abandoned the charge that the collision occurred with the actual fault or privity of the defendant, and the substantial questions raised were: whether, by the entry and racing regulations, a contract had been created between the owners of the yachts, and whether the contract, if any, was to pay all damages without regard to the statutory limitation of liability.

Bruce J. held that, even if there was a special contract, there was no evidence of any intention to waive the protection of the statute, and that the words "all damages" in the rules meant only such damages as could be recovered in the ordinary course of law, so that the defendant was entitled to limit his liability under s. 54 of the Merchant Shipping Act Amendment Act, 1862.

The plaintiffs appealed.

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13 (1) The Merchant Shipping Act Amendment Act, 1862 (25 & 26 Vict. c. 63) :—
Sect. 54: " The owners of any ship . . . shall not, in cases where all or any of the following events occur, without their actual fault or privity. . . .
" (4.) Where any loss or damage is by reason of the improper navigation of such ship as aforesaid caused to any other ship, or boat, or to any goods, merchandise, or other things whatsoever on board any other ship or boat; be answerable in damages in respect of (such) loss or damage ... to an aggregate amount exceeding eight pounds for each ton of the ship's tonnage; such tonnage to be the registered tonnage in the case of sailing ships. . . ."
[This Act is repealed by the Merchant Shipping Act, 1894, of which the corresponding section is 503.]

The full text of the high-lighted section reads with a side note of "Amount of Liability":
be answerable in damages in respect of loss of life or personal injury, either alone or together with loss or damage to ships, boats, goods, merchandise, or other things, to an aggregate amount exceeding fifteen pounds for each ton of their ship's tonnage; nor in respect of loss or damage to ships, goods, merchandise, or other things, whether there be in addition loss of life or personal injury or not, to an aggregate amount exceeding eight pounds for each ton of the ship's tonnage; - ECG

14 (1) According to the programme of the Mudhook Regatta it was a condition that:—
"Yachts to be steered by a member of the club, the Royal Northern, Royal Clyde, or Clyde Corinthian, Yacht Clubs, and, if any person not a member touch the tiller, or in any way assist in steering, the vessel will be disqualified." - ECG

Sir Walter Phillimore, Joseph Walton, Q.C.,[15] and Lauriston Batten,[16] for the plaintiffs, the owner, master, and crew of the Valkyrie.

The defendant cannot claim the benefit of s. 54 of the Merchant Shipping Act Amendment Act, 1862, for, though it is not disputed that the yacht is registered as a British ship under the Merchant Shipping Acts, it is submitted that any statutory right of limitation the defendant might have had is ousted by special contract.

The effect of the defendant signing the entry of his yacht was to create a contract between the defendant, as a yacht owner, and the committee, rendering him liable to the committee for damage to property of the committee such as buoys, boats, or mark vessels, and further to create a contract between himself and all the yacht owners entering for that day, without regard to the particular race, rendering his yacht, if she neglected any of the [252] rules and thereby fouled another yacht, liable, under the 24th rule, to

> "pay all damages,"

and rendering himself — under the The 32nd rule —

> " liable for all damages arising therefrom."

Analogous cases of contracts formed in this way, shewing that it is for the parties concerned to sue and not the committee, are: cases of mutual insurance associations, as illustrated by *Gray v. Pearson*,[17] *Evans v. Hooper*;[18] cases of restrictive covenants on the sale of an estate in lots: *Nottingham Patent Brick and Tile Co. v. Butler*;[19] cases of composition deeds, and cases of undisclosed principals.

As by the terms of the special contract the defendant became liable to pay "all" damages, he thereby waived any right to limitation under the Merchant Shipping Act, for, if the words only mean "all damages recoverable by law," they are not required, as these could be recovered in any event. The owner of the *Valkyrie* claims under rule 32; and if s. 54 of the Merchant Shipping Act, which is confined to damage caused by

15 Walton, Joseph, B.A. LondonUniv. 1865 from Stonyhurst, a member of the Northern circuit, author of Practice and Procedure of Court of Common Pleas at Lancaster, a student of Lincoln's Inn 20 Nov., 1865 (then aged 20), called to the bar 17 Nov., 1868 (eldest son of Joseph Walton, of Ford, co. Lancaster, merchant). Address 13, Harrington Street, and Ford, Liverpool. Births Dec 1845 Walton Joseph W Derby 20 p1017. Married 12 Sept., 1871, Teresa, 4th dau. of late Nicholas d'Arcy, Esq., of Ballyforan, co. Roscommon. Deaths Sep 1910 [d. 12 Aug] Walton Joseph Age 65 Woodbridge 4a p 439. Estate £46,037 13s 11d.

16 Births Sep 1863 BATTEN Lauriston Leonard Gloucester 6a p241 Marriages Jun 1900 Batten Lauriston Leonard to Gibbs Helen Laura Kensington 1a p387 Deaths Sep 1934 Batten Lauriston L Age 71 Cirencester 6a p369 Estate £22,877 17s 6d. - ECG

17 (1) L. R. 5 C. P. 568.

18 (2) 1 Q. B. D. 45.

19 (3) 16 Q. B. D. 778.

improper navigation, is to be applied to restrict the meaning of the words "all damages" in that rule to £8 per ton, then this inconsistent result will follow — that the same words when applied to the breach of a rule, not the result of improper navigation, must be read differently and mean what they say — "all damages." In other words, the contract between the parties is not cut down by the Merchant Shipping Act; it goes beyond and is outside that Act, which was not intended to apply to contracts of this nature, but rests on grounds of public policy to encourage the owning of sea-going British ships: see the recital to the Act of 53 Geo. 3, c. 159, limiting the shipowners' liability for damage by collision.

There is nothing unreasonable in this view, as, at such a regatta as the one in question, there are a number of yachts of all sizes collected together in a confined space, and for the particular race in which the accident occurred it was compulsory that the helmsmen should be amateurs. Yacht racing under such circumstances is notoriously dangerous, and each yacht owner may fairly look to the recovery of all damages consequent [253] on disobedience to the rules by which all have agreed to be bound.

Sir R. E. Webster,[20] Pollard,[21] and G. C. Colville,[22] for the respondent (defendant), the owner of the *Satanita*. The defendant's yacht, a sailing ship registered under the Merchant Shipping Acts, broke the 18th rule of the Yacht Racing Association, which is equivalent to art. 14 of the Regulations for Preventing Collisions at Sea; and for the damage caused by such improper navigation, the defendant, by s. 54 of the Merchant Shipping Act Amendment Act, 1862, is not answerable in damages to an aggregate amount exceeding £8 per ton of the *Satanita* s tonnage.

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20 Webster, Richard Everard, Q.C, later 1st Viscount Alverstone. M.A. Trin. Coll., Camb., 1868, educated at King's Coll. School and Charterhouse, a member of the South-eastern circuit, "tub-man" of Court of Exchequer 1872-4 and "postman" 1874-8, a student of Lincoln's Inn 22 April, 1865. Called to the bar 30 April, 1868, Q.C. April, 1878, bencher 2 Nov., 1881; M R 1900; L C J 1900; (2nd son of Thomas Webster, Q.C. late a master of the bench) ; born 22 Dec., 1842; married 18 Aug., 1872, Louisa Mary, only dau. of William Charles Calthrop, Esq., of Withern, co. Lincoln. [She died 1877] Marriages Sep 1872 Calthrop Louisa Mary to Webster Richard Everard Louth 7a p907 Deaths Dec 1915 [d. 15 Dec] Webster Richard E Age 72 Hambledon 2a p249 Address: Hornton Lodge, Pitt Street, Kensington, W..2, Pump Court, Temple, E.C. ; Clubs: Athenaeum, United University, and St. Stephen's. Viscount Alverstone the right honourable Richard Everard of Winterfold Cranleigh Surrey G.C.M. died 15 December 1915 Probate London 14 March to Alfred Shaw-Mellor esquire John Frederick Peel Rawlinson K.C. and Hugh Calthrop Webster surveyor. Effects £311,373 4s. 11d. Resworn £311,225 15s. - ECG

21 Pollard, Edward Hutchinson (Q.C.Hong Kong 1865), a member of the Southeastern circuit, formerly member of executiveand legislative councils Hong Kong, and acting attorney-general of that colony, a student of the Middle Temple 24 Jan., 1855, called to thebar 30 April, 1858 (eldest son of Edward Hutchinson Pollard, of Newcastle-upon-Tyne, sometime of Sydney, New South Wales, merchant; born 3 Oct., 1829. Marriages Dec 1857 Pollard Edward Hutchinson to Jessop Susannah Brown Boston 7a p751 Deaths Mar 1907 [d. 12 Feb] POLLARD Edward Hutchinson Age 77 Croydon 2a p262 Estate: £50. - ECG

22 The Hon George Charles Colville, B.A. Cantab., 3rd Son . of Viscount Colville ; b. 22 Feb1867; d. 19 Sep 1943 Mem .Lincoln's Inn. Address: 42 Eaton Place S.W. - ECG

The positive provisions of the statutes limiting the liability of shipowners existed before any sailing rules were embodied into regulations for preventing collisions at sea. These rules have nothing to do with limitation of liability, and only amplify that practice of seamen, neglect of which, before the rules existed, was deemed evidence of negligence in the navigation of a sailing vessel. In respect of the consequences of that negligence, without the actual fault or privity of the owner, the legislature has thought fit to limit his liability — that is, his liability is limited in respect of

> " all damages wrongfully done by a ship to another whilst it is being navigated ": *The Warkworth*.[23]

There is no evidence that the defendant specially contracted himself out of the statute, and there is no consideration for any such contract. The rules of the Yacht Racing Association cannot make a contract between two owners of yachts. They do not address the plaintiff or defendant, but are the terms under which the committee allow a yacht owner to enter; at most, they amount to a contract between each yacht owner and the committee, that, if the committee has to pay damages, the yacht owner will be liable for those damages to the extent, in the case of improper navigation, of the limit provided by law, and will not dispute his legal liability on the ground, for example, that the person who did the damage was an amateur helmsman not his servant. But whether there is a contract or not, the liability is limited, and the words "all damages" in rule 24 must be [254] construed according to the existing law and be read "any damages," just as the previous words "forfeit *all* claim to the The prize" must mean "*any* claim." So the special conditions in Rule 32 cannot affect the statutory enactment, and the words "all damages" in that rule must also be read as "any damages" — that is, any damages recoverable by law, and by law the defendant is declared not to be "answerable in damages" beyond £8 per ton. In an ordinary bill of lading there is no reference to the statute, but the liability of the shipowner is nevertheless limited. Assuming that there was a contract between the plaintiff and the defendant, still the provisions of the Act will override that contract, for the limitation is to be construed in favour of the shipowner: see per Coleridge C.J. in *Wahlberg v. Young*.[24]

In the case of the contract of suretyship the liability of the surety is restricted to the legal consequences; so a covenant for quiet enjoyment is not a covenant to indemnify against all persons, but only a covenant against persons having lawful title: *Nash v. Palmer*;[25] so an undertaking to indemnify against *all* costs and charges and expenses in and about the formation of a company is only a covenant "to indemnify against *lawful* claims": per Cresswell J. in Lewis v. Smith.[26] In order that the general provisions of the Merchant Shipping Act may be overridden by a particular contract,

23 (1) 9 P. D. 145, judgment of Brett M.E., p. 147.
24 (1) 45 L. J. (CP.) 783, at p. 785.
25 (2) 5 M. & S. 374.
26 (3) 9 C. B. 610.

the intention to do so must be manifest, or the implication be irresistible: *Conservators of Thames v. Hall*.[27]

Joseph Walton, Q.C., in reply. The question what the damages are in a case of collision arising from improper navigation is not affected by s. 54 of the Merchant Shipping Act, for, wherever there are more claimants than one, the actual damages each claimant has sustained by the collision are ascertained and assessed in full in the Admiralty Registry with due regard to the doctrine of remoteness of damage, and, if the fund prove insufficient, then only a percentage of those damages is paid out to each claimant, because under the statute "all" the damages are not recoverable. Under this contract, however, they are, and the damages [255] are not confined to the consequences of improper navigation, but extended to the consequences of breaches of such rules as relate to not crossing the starting-line too soon, or giving way as the the outside yacht, &c., some of which rules, though they conflict with the ordinary rules of navigation, are nevertheless binding on all yachts taking part in the regatta, and if broken, entail as a consequence a liability to "all" the damages arising therefrom.

Lord Esher M.R. This is an action, by the owner of a yacht against the owner of another yacht, and, although brought in the Admiralty Division, the contention really is that the yacht which is sued has broken the rules which by her consent governed her sailing in a regatta in which she was contesting for a prize.

The first question raised is whether, supposing her to have broken a rule, she can be sued for that breach of the rules by the owner of the competing yacht which has been damaged; in other words, Was there any contract between the owners of those two yachts? Or it may be put thus: Did the owner of the yacht which is sued enter into any obligation to the owner of the other yacht, that if his yacht broke the rules, and thereby injured the other yacht, he would pay damages? It seems to me clear that he did; and the way that he has undertaken that obligation is this. A certain number of gentlemen formed themselves into a committee and proposed to give prizes for matches sailed between yachts at a certain place on a certain day, and they promulgated certain rules, and said:

> "If you want to sail in any of our matches for our prize, you cannot do so unless you submit yourselves to the conditions which we have thus laid down. And one of the conditions is, that if you do sail for one of such prizes you must enter into an obligation with the owners of the yachts who are competing, which they at the same time enter into similarly with you, that if by a breach of any of our rules you do damage or injury to the owner of a competing yacht, you shall be liable to make good the damage which you have so done."

27 (4) L. R. 3 C. P. 415.

If that is so, then when they do sail, and not till then, that relation is immediately formed between the yacht owners. There are other conditions with regard to these matches which constitute a relation [256] between each of the yacht owners who enters his yacht and sails it and the committee; but that does not in the least do away with what the yacht owner has undertaken, namely, to enter a relation with the other yacht owners, that relation containing an obligation.

Here the defendant, the owner of the *Satanita*,[28] entered into a relation with the plaintiff Lord Dunraven,[29] when he sailed his yacht against Lord Dunraven's yacht, and that relation contained an obligation that if, by any breach of any of these rules, he did damage to the yacht of Lord Dunraven, he would have to pay the damages.

Now the defendant admits that his yacht, the *Satanita*, broke the rules. It is not material at present to consider which rule was broken, but, as a consequence of breaking the rule, his yacht ran into Lord Dunraven's yacht and sank it. That is conceded. Now comes the question, What damage is he liable for? He had entered into a relation with Lord Dunraven under these rules. It is quite a different relation from that which exists between the two owners of two ships sailing on the ocean, for the only relation which exists between the two ships is that, by reason of their contiguity on the ocean, one of them shall not by negligence run into the other. Rules grew up, known to all sailors, long before the statute was passed, which, amongst other things, held that any ship which violated those known rules was acting negligently towards the other ship, but the only relationship existing was that she was not to do her any injury by negligence.

This is a relation which arises from two things or persons being contiguous to each other; for if you choose to drive a tandem across Salisbury Plain as fast as you like and sway it about from one side to the other, you are doing no harm to anybody if there is nobody else on Salisbury Plain; but if there is somebody else on Salisbury Plain, so near to you that by reason of your contiguity you are likely to run into him and damage him, then there arises a duty upon you not to be negligent, but to drive with reasonable care so as not to run into him.

So it was with a ship on the sea. She may go round and [257] round in a circle and sail in any way she pleases if there is no other ship near her. But the moment there comes another ship so near to her that, if she navigates without due and reasonable

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28 Although not named the owner of *Satanita* was Mr Arthur Doveton Clarke. Born Kennington, Surrey 1844 [Ch. 2 Apr 1845] son of John Jeffries [stock broker] and Fanny Jane; followed in father's profession [Linton, Clarke and Co.]; married summer 1869 Edith Amy Beare, she pre deceased him dying 19 Nov 1891 [aged 40]; he died 27 Mar 1897; estate £84,468 16s. 3d. - ECG

29 Windham Thomas Wyndham-Quin, 4th Earl of Dunraven and Mount-Earl, [Irish title] 12 Feb 1841 – 14 Jun 1926); his yachts twice competed in the America's Cup: *Valkyrie II* [1893 - lost by 3 races to 0 to Vigilant] and *Valkyrie III* - launched 27 May 1895 [1895- lost by 3 races to 0 to Defender]. Estate [England] £734,821 0s 7d. - ECG

regard for the other ship, she may injure her, then the relative duties immediately arise. Besides those duties which by universal custom determine what would be negligent steering or sailing, the Act of Parliament was passed which stated that when two sailing ships are approaching one another so as to involve risk of collision then each of them is to do certain things. Those rules do really fix what under those circumstances will be negligence, unless the rules are broken by reason of inevitable accident.

With regard to the rules governing this particular regatta, the committee could not make any rule which would affect ships which were not going to take part in this regatta. I cannot agree with counsel for the defendant that a vessel coming up or down the Clyde would be bound to take notice of the rules of this regatta. They have nothing to do with them. They are entitled to sail in and out according to the usual mode of navigation. They ought not to sail according to these rules, even though they knew that the regatta was being held, and even although they knew all the rules of the regatta they would not be bound to observe them. On the contrary, they ought to observe the ordinary rules of navigation. If, whilst they are so sailing, they do interfere with the regatta, it will be for the yachts sailing in the regatta to take care of themselves and observe the ordinary rules of navigation with regard to these vessels which are not sailing under the regatta rules, and if that spoils their match it cannot be helped.

But vessels taking part in the regatta have undertaken an obligation to each other which is this, namely, Whether what you do is, or is not, contrary to the ordinary rules of navigation, if it is contrary to these rules, I have agreed with you, and you have agreed with me, that we shall both observe these rules, otherwise you cannot have any claim against me under these rules, and if I do that which is a breach of these rules, you can have a claim against me in respect of the breach of these rules.

There are some of these rules, as has been pointed out, which [258] alter the ordinary rules of navigation between these parties who have agreed to sail according to these altered rules, and if one of them breaks these altered rules, he is, by these rules, to have a claim maintained against him. Then comes the question, What is that claim?

We have to construe the rule which is applicable in this case, and that is rule 32.

I know that the plaintiff has relied in a sense upon rule 24; but I think the governing rule in this case is rule 32, which runs as follows:

> " Any yacht disobeying or infringing any of these rules, which shall apply to all yachts, whether sailing in the same or different races "

— I do not construe that part of the rule, because I do not think it is material —

" shall be disqualified from receiving any prize she would otherwise have won "

— that condition by which they have agreed with the committee, the persons who give the prizes, that they shall be disqualified from receiving any prize, does not affect the owners of other yachts. Now we come to this:

"And her owner shall be liable for all damages arising therefrom."

Can that mean an obligation which they have undertaken to the committee?

If a yacht runs into one of the other yachts, as was done on this occasion, how can that damage the committee? The committee have no interest in the yacht, they have not to pay for the loss of the yacht, and have nothing to do with the yacht, except that they have allowed her to run in the race for a prize; and if she won the race the committee has entered into an obligation to give her a cup, or money, or whatever it might be; but the committee is not damaged, and cannot be damaged. Then who has the right to claim those damages? It seems to me clear that it is the owner of the yacht which has been sailing against this yacht, or at all events in the regatta. You must read in "to any other yacht which he may damage" for "all damages arising therefrom." If rule 24 is looked at, it seems to me to make it clearer that that must be the meaning, because it says:

" If a yacht, in consequence of her neglect of any of these rules, shall foul another yacht "

— that is the thing which does the injury to the other yacht owner —

"she shall forfeit all claim to the prize, and shall pay all damages."

What meaning are we [259] to put upon those words, "all damages"? If it had been "shall pay damages" it would have been a futile rule, because if the rule was broken negligently the yacht owner would be liable to the damages. Why is the word "all" put in? Nobody has able to suggest any meaning to this word "all" except that it must be all the damages caused by the fouling. All the damages to whom? All the damages to the owner whose yacht has been injured. To my mind it is plain and clear. It is all damage caused to the owner of another yacht by reason of an injury having been done to that yacht. On the other hand, as the liability is for injury done to the yacht, if a yacht owner is going to make a present of valuable jewels to a lady after the race is over, and has the box containing them on his yacht at the time, or is allowing a lady to be on board during the race, with boxes of dresses or jewels or the like, I have no doubt that the loss of those jewels or dresses would be a thing which the other party could not contemplate as a possible result of what he was doing, and therefore he

would not be liable.

I cannot see how to construe that word "all" without saying that the effect of it is clearly to do away with the limitation contained in the Merchant Shipping Act; and although it cannot be denied that this limitation, if it were not for these words of the rule, would apply, it is a mere accident, for the Merchant Shipping Act was not intended to apply to all yachts, and certainly not to racing yachts, and they are only brought in by the section in this Act defining what ships are to be considered as within the statute.

It is always agreeable to think that a rule which one feels obliged to lay down can have a reasonable foundation, and I think it can in this case.

The yachts under these rules are to be steered by amateurs. The yachts which come in to compete do not know what yachts are coming against them, and therefore cannot possibly know the sailor-like capabilities of the owner of a yacht, or of his amateur friend. Then they are not in the condition that they would be if the yachts were to be sailed by a master, and therefore have not that protection that the yacht is going to be steered and sailed by a capable sailor. Here the yacht may be in fault [260] by reason of the incapacity of a person as to whose capacity the other yacht owners have no means of judging. I think, therefore, it was very reasonable, to say that if you do enter into such game as this to be played by an incapable person, if he does commit a fault to the injury of the other, you must pay all the damages, and not be limited either to £8 or to £15 a ton, otherwise, although you might have a most valuable yacht, if she were sunk by another yacht of a very small tonnage, there would be no real remedy at all. Those reasons seem to me to make the rule a most reasonable protection against gentlemen who will have their little gambol with their yachts, and I have a strong conviction that the interpretation which we are proposing to put upon it is reasonable and right, and I think, therefore, that this appeal must be allowed.

Lopes L.J. If we were not differing from the learned judge below, and if this were not important in the sense of involving a large amount of money, I should not think it necessary to deliver any judgment of my own, as I should be prepared to adopt the judgment of the Master of the Rolls; but in the circumstances I will shortly express my view of this case.

The questions are, first, was there a contract?

Secondly, what was the contract?

Now it is admitted that the *Satanita* and the *Valkyrie* had been entered for the fifty-mile race in the regatta of the Mudhook Yacht Club on the Clyde, that they had respectively agreed to obey the rules of the Yacht Racing Association, that the yachts

had become amenable to those rules, that the *Satanita* violated one of those rules, and that it was the 18th rule which was violated. [The learned judge read the rule, and continued: —]

We therefore start with this, that rule 18 was infringed, and that the owners of both these yachts adopted these rules, and, in point of fact, sailed their yachts under them.

As to the first question, I have no doubt that there was a contract. Probably a contract with the committee in certain cases, but also a contract between the owners of the competing yachts amongst themselves, and that contract was an undertaking that the owner of one competing yacht would pay the [261] owner of any other competing yacht injured by his yacht all the damages arising from any infringement or disobedience of the rules.

In my opinion, directly any owner entered his yacht to sail this contract arose; and it is clear that the owners of the *Valkyrie* and the *Satanita* did enter their respective yachts and did sail. Therefore, there was a contract, and under rule 32 damages became payable; but it is said that the damages are limited under the Merchant Shipping Act. In order to decide that, we must look at rule 32; for, though I do not overlook rule 24, I base my judgment on the meaning of rule 32. [The learned judge read the rule, and continued: —] It is said by counsel on behalf of the *Satanita* that that means all legal consequences — all damages recoverable by law — and therefore only means damages limited by the Merchant Shipping Act.

If that is the true construction of the rule, I can see no necessity for the insertion of the words "all damages arising therefrom," because the damages limited by the Merchant Shipping Act would have followed; and this anomaly would also arise, that there would be damages of one kind when there was improper navigation, and damages of another kind if the injury was caused otherwise than by improper navigation. I cannot, therefore, agree with that construction of the rule, nor understand why we are not to give full effect to the words "all damages arising therefrom." Any other construction would, I think, be contrary to the true meaning of these words. It is said that the words must be given their ordinary meaning, unless the giving of that meaning leads to an absurdity. Does giving that meaning to the word "all" lead to absurdity here? On the contrary, I think that that word "all" was used deliberately and for a purpose. These yachts were not to be steered by a professional steersman, but by amateurs, and it was natural, in those circumstances, that the owner of one yacht should not be exposed to the great risk which might arise to his yacht by reason of another yacht being steered, it may be, by an incompetent steersman, of whose competency the owner of the other yacht had no knowledge. It seems to me to be a reasonable ground for introducing this word. It cannot, therefore, be said that the [262] construction which we propose to give the words leads to an absurdity.

The case was suggested by counsel for the *Satanita* of a lady falling into the water and damaging her dress. It is said that, if we give this large construction to the word "all," we should be including a case like that; but the lady would not be a party to this contract, and therefore could not recover under this rule. I am of opinion that the judgment of the learned judge in the Court below must be reversed.

RIGBY L.J. I am of the same opinion, and, out of deference to the learned judge, will shortly state my reasons.

The first question is that of contract or no contract. It appears to me that all that is necessary to constitute a contract between the yacht owners is to bring home to each of them the knowledge that the race is to be run under the Yacht Racing Association rules, and that they, the one and the other, deliberately enter for the race upon those terms. In this case we have a written document, signed by each yacht owner, which, if there were any doubt at all, would render it abundantly clear that he was perfectly well aware of the bargain he was entering into. In no other way than that does it appear to me to be material.

The contract did not arise with any one, other than the managing committee, at the moment that the yacht owner signed the document, which it was necessary to sign in order to be a competitor. But when the owner of the *Satanita* on the one hand, and the owner of the *Valkyrie* on the other, actually came forward and became competitors upon those terms, I think it would be idle to say that there was not then, and thereby, a contract between them, provided always that there is something in the rule which points to a bargain between the owners of yachts. Under rule 24,

> "If a yacht, in consequence of her neglect of any of these rules, shall foul another yacht, or compel other yachts to foul, she shall forfeit all claim to the prize, and shall pay all damages."

To whom is the owner of that yacht to pay those damages? He cannot pay them to the club, nor do I think the club could recover them. The true and sensible construction is that he must pay the owner of the yacht fouled.
[263]
Under the 32nd rule a breach of any of the rules renders the owner liable for "all damages arising therefrom." I am prepared to acquiesce in the suggestion that those words must be the treated according to their ordinary meaning; but there can be no doubt that the ordinary legal meaning of damage includes damage to a vessel sent to the bottom. The argument that if we give the full meaning to the words "all damages" we may be including damages which are remote, is, I think, removed by the fact that this is damage clearly within the ordinary meaning of the law.

As to the limitation under the Merchant Shipping Act, if the damage does not amount

to the limit, it is paid in full, and all that the section says is, that under certain circumstances the owner of the ship in default shall not be answerable in damages beyond a certain amount. If we were dealing with that class of case here we should have to apply the section to the case of yachts; but when we come to the actual contract entered into, what can be clearer than the meaning of the word "all"? "All damages arising therefrom." It means what it says. To get out of that meaning you must introduce a great deal more than the argument for the defendant would allow. You must say damages, which would be the legal consequence if there were no such contract as we are now dealing with. On the whole I am of opinion that the parties who drew up these rules intentionally put the words in, and that the yacht owners contracted themselves out of that accidental benefit which was given to them by the Merchant Shipping Act. I agree that the judgment below must be reversed.

Appeal allowed.[30]

Solicitors for plaintiffs: *Waltons, Johnson, Bubb & Whatton.*[31]
Solicitors for defendant: *Thomas Cooper & Co.*

T. L. M.

[264]

30 (1) By the decree of the Court of Appeal (settled May 31), the Court reversed the decision of Bruce J., so far as it pronounced that, as against the plaintiff, the owner of the *Valkyrie*, the defendant was entitled to limit his liability. As regarded the master and crew of the *Valkyrie*, the Court dismissed their appeal without costs. - Book f/n.

31 101, Leadenhall-street, E.C.